

How to Sell Lisbon in Prague: Prospects for the Lisbon Treaty's Ratification in the Czech Republic

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Theme: The ratification of the Lisbon Treaty in the Czech Republic continues to be surrounded by uncertainty.

Summary: Many questions remain unanswered concerning the progress of the Lisbon Treaty's ratification in the Czech Republic. The debate in Parliament has been suspended while the Treaty has been side-tracked to the Constitutional Court. It is to be examined for its compatibility with the national constitution and a ruling is only expected in September or October at the earliest. The Irish rejection of the Lisbon Treaty has, moreover, injected new dynamics into the process. The President has proclaimed the Treaty dead and this might pose problems to complete the ratification. In the Senate, Euro-sceptic voices have been encouraged and it is not sure whether the necessary majority will be secured. However, what can push the Czechs to complete ratification is their EU Presidency, starting in January 2009.

Analysis:

Background: Why the Czechs do not Like the EU Treaties

It is difficult to explain why the Czech political scene does not like the debates on the European treaties, but it is a fact. The first EU treaty approved by the Czechs was the Accession treaty. But it never got to a parliamentary vote. The parliament approved a Constitutional law which called for a referendum whose positive outcome would replace parliamentary approval. As the result was an overwhelming 'yes' (77% in favour), the treaty was not even debated in Parliament.

The fate of the Constitutional Treaty was far more peculiar. The Czech Republic was the only EU member state that had not decided on the mode of ratification. The Czech Constitution envisages a standard ratification with parliamentary approval unless Parliament itself calls for a referendum. On the Constitutional Treaty, most political parties agreed that it was such an important issue that people should be given a say. However, calling for a referendum required constitutional, ie, a three-fifths majority in both chambers –the Chamber of Deputies and the Senate–. The problem was that the two major parties – the conservative Civic Democrats (ODS) and left-wing Social Democrats (ČSSD)– were each of them strong enough to block the constitutional majority and could not agree on the parameters of the referendum. While the Social Democrats wanted to combine the

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referendum with parliamentary elections in June 2006, hoping that the treaty could bring them more votes and save them from an expected defeat, the Conservatives claimed that the vote should be held at least six months before any general election. In the end, both of them were quite happy that the French and the Dutch rejected the treaty, which practically buried the Czech political debate, until a new text landed on their tables –the Lisbon Treaty–. The squabbling of the two rivals over technical issues, however, revealed a more serious problem: that the two major political parties do not share the same vision of the EU's future. The polarisation of the Czech on Europe is much stronger than in other new member states. Given the generally lukewarm attitude of the majority of the Czech population, the politicians prefer to keep European issues out of the public's sight, as they do not believe they can help them politically.

The Government and the Lisbon Treaty: A Marriage of Convenience?

There is a significant difference between the Constitutional and the Lisbon Treaties from the Czech perspective. While the former was negotiated by the Social Democrats, who are in favour of deeper integration, the latter was negotiated by the ODS-led government that swept to power in 2006 and has a far more cautious approach to the EU. For the Prime Minister, Mirek Topolánek, the Treaty is a pragmatic choice paving the way for the eventual acceptance of Croatia and other Balkan countries to the EU rather than a sign of his enthusiasm for the communitarisation of police and judicial co-operation or for a stronger EU foreign policy. But for several reasons he became personally supportive of the Treaty. First, the Czech government gained practically all the concessions it asked for in the final text, such as scrapping symbolic references such as the EU flag, anthem, motto and Foreign Minister, 'either way passerelle' clause –enabling the transfer of competences from the EU back to member states– or stronger safeguards for national parliaments. Topolánek was also quite clever in appointing one of the leading Euro-sceptics, MEP Jan Zahradil, the Sherpa for negotiations with the German presidency – which makes it much harder for him to argue against the Treaty now, as he was in charge of striking a compromise–. Secondly, Topolánek has to keep together a coalition with two strongly pro-European parties, the Christian Democrats (KDU-ČSL) and the Green Party (SZ), both of which are very much in favour of the document. Thirdly, and this is often overlooked, there is a strange paradox in the Czech political scene. While the ODS shows many signs of Euro-scepticism, its voters are strongly pro-European. On the contrary, the Social Democrats who are enthusiastic Europhiles have a far more Euro-sceptic electorate. A recent poll has clearly shown that while most ODS voters think the Parliament should ratify the Lisbon Treaty, most ČSSD supporters do not. But the Prime Minister might eventually have his strongest opponents within the ranks of his own party: the ODS's President and its senators.

The Senate: The Devil's Advocate

The Lisbon Treaty passed quite smoothly at the first reading in the Chamber of Deputies. However, problems emerged when it was tabled in the Senate. The EU Committee, when examining the Treaty, recommended a halt in the ratification process and the submission of the Treaty to the Constitutional Court. This procedure is envisaged for international treaties that transfer competences from the Czech Republic to an international organisation such as the EU in order to avoid future possible clashes between the Czech Constitutional Court and the European Court of Justice, as has occurred in the past with the German Constitutional Court and the French Conseil d'Etat. Although most constitutional lawyers agree that the competence-transferring international treaties according to Article 10a of the Constitution have the same legal value as the Constitution itself (thus basically amending it), this *a priori* compatibility check should serve to tackle

any possible discrepancies before ratification. Despite the fears that the process might delay ratification, the government was in favour of having the Constitutional Court rule on the Treaty, as it was reluctant to launch the procedure itself. Six points were raised by the Senate on which a potential clash between the Lisbon Treaty and the Czech Constitution could appear, including the extended scope of subsidiary competence of the EU, the 'passerelle' clause and the implications of the legally-binding EU Charter of Fundamental Rights. While legally this step is justifiable and perhaps even desirable, there is no doubt that there were also political calculations, triggered by the expectations of the outcome of Irish referendum and a silent hope that the issue might be removed from the table if the Irish voted against. In any case, the Irish 'no' had serious consequences for the debate on the Treaty's fate in the Czech Republic.

The Constitutional Court: The Risk of a Judicial Coup against the Treaty

The legal procedure launched in Constitutional Court is at the moment the key element which will decide how the Czech ratification proceeds. Obviously it is difficult to speculate on the Court ruling, as deliberations take place *in camera*. However, it is plausible that the Court will take a more political view, as its current composition is quite political, including several former high-profile politicians. Recently, the court has taken a political stance on the issues of healthcare reform and in the disputes between the President and the Supreme Court. The timing is also crucial. The Court prioritised the case and started deliberating immediately. However, the President, who is *ex lege* entitled to intervene in the procedure, asked the Constitutional Court to examine the Treaty in its entirety in its relation with to the Czech constitution. So far it seems that the Court will discuss only the points raised by the Senate. If this were the case, the President might try to re-launch the case when he is to ratify the Treaty. This will delay ratification even further.

There are two options as to the substance of the Court ruling. In the first case, the Court could rule that the Treaty is fully compatible with the Czech constitutional order. In that case, ratification can proceed and the Treaty will return to parliamentary deliberation, making it a less problematic option. In the second case, the Court could rule that the Treaty is incompatible and as regards what specific clauses. In this case, ratification will not proceed until a Constitutional amendment is adopted, bringing the two documents in line. This would be far more complicated to achieve, given the current constellation in the Parliament, where it is extremely difficult to achieve a constitutional (ie, three-fifths) majority. Those parliamentarians who tend to view the Treaty negatively will see it as an unwanted change in the Czech Constitution by the backdoor and will be unlikely to approve the changes.

The Next Steps: The Senate, the President and the EU as Key Actors

Even if the compatibility ruling of the Constitutional Court is positive, there will be many hurdles on the way to completing ratification, due to both internal and external factors. A very complicated debate in the Senate can be expected. Despite the fact that the governing ODS holds a comfortable majority of 41 senators out of 81, many of them are determined to vote against the document. Their loyalty to the government is not at stake as the senators often act independently, their mandate not being linked to the government as in the case of deputies. Recently, 10 ODS senators defied the Prime Minister on another important treaty, on the International Criminal Court, which Topolánek was eager to get approved before the Czech Presidency. A possible strategy to make rebel ODS senators approve the Lisbon Treaty is to arrange a trade-off with the missile defence treaty with the US, which will also be submitted for parliamentary approval in the autumn. However, it will be difficult for the Prime Minister to use this as a bargaining chip. For the

opposition Social Democrats it would be foolish to trade Lisbon for a radar, as they know the government is eager to get both treaties adopted, but it would imply a double loss for them. The socialist voters are strongly against the missile defence treaty but also overly negative about Lisbon, and the Social Democrats' opposition to radar is more strongly articulated, more consistent and more united than the opposition of some ODS members to the Lisbon Treaty. Therefore the Prime Minister will probably have to devise some other strategy, as it is highly unlikely for such a trade-off to work. Secondly, the impact of the Irish 'no' has been quite important. It has encouraged the members of the Senate who are against the Treaty but were determined to vote in favour on account of their loyalty to the government. Thus when the Treaty gets back to parliamentary deliberation, it will be crucial whether a solution on how to proceed with regard to Ireland will be found at the EU level. If there is a clear perspective that the document will be put to a second vote, and there is a fair chance that it will be finally adopted (with possible concessions to Ireland in the form of a special declaration or protocol), the chances of gaining the Senate's approval will substantially increase. There is also a third, arguably less important variable: Senate elections will be held in November 2008, with the replacement of one third of the senators. This might change the dynamics, although not substantially; even if the ODS (12 senators of which are seeking re-election) loses its majority, the Treaty will still need the votes of three-fifths of the senators to get through.

Even in case that the Senate approves the Treaty, there is another actor that is already stirring up the debate: the President. Václav Klaus is undoubtedly the most Euro-sceptic head of state in the EU (possibly only competing with Lech Kaczyński). Although originally he signalled that in the event of parliamentary assent consent he would not pose any problems, the situation changed after the Irish 'no' vote. President Klaus was the first Czech politician to claim the Treaty was dead, calling this 'a victory of reason over the artificial attempts of European elites to achieve forceful unification of Europe'. Recently he has somewhat moderated his opposition, claiming that if the Irish vote again, ratification could possibly proceed. The debate now revolves around what Klaus will do in the next stage. There are several scenarios. The first is that he will just complete the ratification if parliamentary assent is granted, without making any trouble. Another possibility is that he will try to refer the Treaty to the Constitutional Court again if the Court does not respond to his concerns in the first ruling, which will delay the process further, as already suggested. The doomsday scenario is that he will prolong ratification indefinitely or refuse altogether. It is not clear from the Czech Constitution whether the President has the right not to ratify a Treaty approved by the Parliament, so the matter might eventually have to be decided by a Court ruling, again resulting in delay. The third, perhaps the most likely scenario is that rather than seeking direct confrontation, Klaus will try to use his influence as Honorary Chairman of the ruling party to act as a 'Trojan Horse' within the ODS and convince more of the Euro-sceptic parliamentarians to vote against. This will be very bad news for the party and for the government ahead of the Czech EU Presidency, and could seriously undermine the Premier's position and lead to a major dispute over the party's attitude towards Europe.

Conclusion

Why the Czechs are Likely to Say 'Yes' Eventually

Prime Minister Topolánek is currently in an extremely uncomfortable position, having to two very divisive treaties –Lisbon and missile defence with the US– through Parliament. However, there are several reasons to believe that the Czech ratification of the Lisbon Treaty will continue and eventually be completed. The Lisbon Treaty is less controversial

than the other, although the attitudes of those in favour range from the enthusiastic Euro-optimism of the Social Democrats and the Greens to the cold pragmatism of a large parts of the ODS. The first and possibly most important short-term source of pressure is the upcoming EU Presidency. Without ratification of the Treaty, the Czech Republic would lose any leverage to push for the policies that the current government is extremely ambitious about, including the enlargement to the Balkans and energy security. The Presidency is also important for the government, as it can ease off some pressure within the coalition and also from the opposition. As this is the Czech Republic's first Presidency of the EU, most of the political actors will like it to be a success, and clearly it will be much easier with the Lisbon Treaty off the table. Thus, settling the issue of how to proceed after the Irish 'no' at the European level is of major concern to the current government. Clearly Topolánek would like to have a feasible plan adopted during the French Presidency to propose a viable solution out of current deadlock. This would make it easier to convince the rebel parliamentarians to say 'yes' with a roadmap adopted sometime in the autumn of 2008, preferably at the October informal summit. But the Presidency generates only short-term pressure. What is more important is that the strong polarisation of the Czech political scene regarding the future of the EU –with the Right wanting 'less Europe' and the Left seeking deeper integration– will not disappear overnight unless a more pragmatic faction in the ODS finally prevails, preventing the hardcore Euro-sceptics from imposing President Klaus's discourse. If and when this happens still remains to be seen, but it is quite possible that the Lisbon Treaty's ratification will be the first important litmus test.

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